



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue ▪ Suite 2000 ▪ Seattle WA 98104

Eminent Domain Task Force
Friday, August 15, 2008
9 a.m. to 12 p.m.

MINUTES

Meeting called to order at 9:04 a.m. by Tim Ford.

Attendees

Members: Tim Ford, Dan Wood, Craig Johnson, Mary Lou Powers, Representative Larry Springer, Mike Bindas (on behalf of William Maurer), Bryce Brown (by phone), Randy Bannecker, and Bernard Ryan (on behalf of Senator Kline)

Guests/Others: Mark Quehrn, Diane Symms, Tom Stowe, Terry Price, Dan Sytman, and Danielle French

Guest Mark Quehrn--Utility Service Providers Representation

Mr. Quehrn, attorney with Perkins Coie, LLP, has been a legal representative for entities exercising power of eminent domain and for land owners whose property was being condemned. Some of those entities are special use districts (small government entities with focused objectives) and public service companies (such as Puget Sound Energy) regulated by the state of Washington. Mr. Quehrn distributed a document he prepared entitled "Judicial Review of the Necessity of Condemnation of the Exercise of the Power of Eminent Domain" and summarized its content. Mr. Ford thanked Mr. Quehrn for his participation and invited him to attend future meetings. Mr. Quehrn stated he would like to be a resource for the task force.

Review of June Meeting

Discussed minutes from June 12, 2008, meeting. Mr. Ford suggested that the minutes be amended to include the names of attendees. Motion made, seconded, and passed.

Integrating Task Force Agenda and Representative Springer's Work

Rep. Springer stated he is working on his bill, 2016, for the 2009 legislative session. It may be presented as one bill or may be broken down into smaller ones. He attended a stakeholders meeting outside of the Eminent Domain Task Force, which included representatives from the law firm of Rodgers, Deutsch & Turner. Daryl Deutsch prepared a letter for them that goes through 2ESSB 2016 and describes how it should be modified.

Ms. Powers distributed her memorandum to the task force outlining the changes proposed by Mr. Deutsch as compared to Rep. Springer's bill. She also indicated that it appears the Supreme Court is not upholding the constitution in its rulings. There needs to be a definition of "necessity" and "public use." She suggested looking at Idaho's statute regarding economic development.

Rep. Springer will sit down with legislative staff in September to draft a new bill that will cover the following.

1. Necessity issue (due diligence)--why another option won't work
2. Level of fee reimbursement to property owner--\$5,000 limit; may use model that Sound Transit used of paying upfront
3. Buy-back proposal (the trickiest one)--how to value property; automatically buy back at original price plus interest; does it pass constitutional muster
4. McKenna's letter--economic development issue

Implementing AG McKenna's Letter

Mr. Ford reiterated the goal of the task force, as stated by Attorney General McKenna in his July 9, 2008, letter to the members. The task force should focus on determining: "Whether legal protections are needed in Washington to limit or prohibit the use of eminent domain for economic development purposes." Mr. Ford stated that specific instances of eminent domain abuse need to be brought to the attention of the legislature.

Ms. Powers asked for explanation of why AG McKenna narrowed the task force's focus to one question, i.e. economic development. Comment was made that the New Mexico task force had their hands full with this one issue.

Mr. Bindas, Institute for Justice (IJ) representative for Mr. Maurer, stated the IJ sent public records requests to public agencies to get data to present a clear picture on how Community Renewal Act is being used in Washington. Is there abuse or not? Expect results in early September and hope to analyze and summarize results in a final report by the end of October.

Mr. Quehrn commented that the task force should look at port districts regarding economic development. Companies ask themselves, "How much can government help my business?" when deciding whether to do business with a port district.

Rep. Springer mentioned that ports were excluded in HB 2016. Mr. Bindas stated port districts need to be looked into; treat separately but susceptible to eminent domain abuse. Mr. Johnson asked, "Why are ports exempt?" Comment made that ports are set up for industrial development.

Mr. Wood stated that we will not pass anything if we take on ports now in this session. We should put it off until the year 2015. Are we a *Kelo* state or not? He feels we are a *Kelo*-like state. Has a *Kelo* occurred here in Washington? Legislature hasn't taken action to prevent this. We shouldn't wait for it to happen before doing something in Washington.

Mr. Johnson suggested the foundation be: "Should eminent domain be limited for economic development?"

Mr. Ford asked that the task force define the process for future meetings. He indicated that the Attorney General's Office (AGO) can provide assistance in indexing laws that authorize condemnation. AGO will create a condensed version to use in developing a list of stakeholders to invite to comment/testify before the task force.

Mr. Ryan suggested that rather than just hearing testimony, shouldn't there be more people on the task force to expand its base. This would insure they would be there for comments and discussions later on.

Mr. Ford wants to keep the task force from becoming too large, to continue to have open meetings, and to diversify appointed membership further to keep a good balance. The chairs decided early on to have elected officials instead of their attorneys on the task force. Attorneys are advocates and may not see all sides of an issue.

Mr. Johnson recommended that we use New Mexico's definition of economic development as a starting base and utilize New Mexico's report as a format for our report. Members present agreed with this.

Ms. Powers commented that government's opinion is they have more bargaining power if they use the threat of eminent domain.

Mr. Quehrn commented that "necessity" piece is a better check on abuse than is "use." Entities will manipulate to get to the entity's purpose in order to comply with condemnation rules.

Mr. Bannecker suggested that we hear from individuals in the Seattle/Renton/Auburn area on reasons for doing economic development.

Mr. Johnson asked that a vote be taken now on two principles as platform of our report: (1) Government needs right of eminent domain. (2) Eminent domain should be limited in use for economic development (constitutional rights--Article I, section 16). Mr. Ford suggested circulating the definitions before the next meeting. Rep. Springer asked that the vote be saved for the full task force. Mr. Bannecker proposed the draft language be put on top of agenda for the next meeting. Mr. Ford reminded members that the principles are not legal conclusions, but guidelines. Mr. Wood suggested we adopt one sentence and phrase the rest as questions.

Mr. Ford stated the consensus of the group was to put the principles in writing for voting on at the next meeting. Mr. Johnson, Mr. Bannecker, and Mr. Wood agreed to draft the principle language.

Mr. Bannecker indicated the task force could spotlight our public hearings going into the next legislative session.

Rep. Springer stated he is ready to move forward with his bill on three topics: necessity/due diligence, level of fee reimbursement to property owner, and buy-back proposal. He will drop the blight and economic development.

Mr. Ford reminded members that AG McKenna feels we should not be in a rush. We should do a thorough study even if we miss the 2009 legislative session. The report shouldn't be a conclusion, but a study with recommendations.

Mr. Johnson inquired if we should have the endorsement of the Governor on our report. He would like majority and minority opinions included.

Mr. Wood suggested focusing on issues before legislature first. Mr. Johnson feels public hearings would strengthen the task force. Rep. Springer recommended the task force focus on economic development and necessity.

Mr. Bannecker proposed the following schedule: September work on principles; October for expert/stakeholder testimony; November for public hearings; December take off and start back in January. Take stakeholder testimony first, in Seattle, and during regular business hours. Take public comment second, in south King County or Snohomish County, and during the evening hours.

Mr. Bindas suggested that we not limit the index to what is subject to economic development, because can use "necessity" to get by and use economic development.

Mr. Quehrn commented that utilities condemn each other.

Tom Stowe inquired regarding the structure of the task force. What is a quorum for this meeting? What is role of non-task force participants at meetings? It was suggested that quorum be two-thirds of members present at previous meeting. Mr. Ford stated the task force will determine how to vote in the future.

Deciding The Way Forward/Action Items/Assignments/Next Meeting

Mr. Ford stated the final consensus of the group:

- Write down guiding principles to vote on at next meeting
- Goals of hearings at next meeting
- Something in writing on timeline of hearings.

Mr. Ford will submit a complete index before the next meeting of agencies allowed to condemn (condemning authorities). He will circulate the following principles for an informal vote before the next meeting: Principle 1: Government has the right of eminent domain. Principle 2: Eminent domain for economic development shall be limited.

Ms. Powers will provide a copy of the letter from Mr. Deutsch for posting on the website, so long as she has the authorization of Mr. Deutsch to do so.

Next meeting September 19, 2008, from 1 p.m.-4 p.m. at Seattle AGO.

Adjourned at 11:38 a.m.